

CHAIRMAN LYNN M. BRAGG
EXPLANATORY STATEMENT OF VIEWS ON ADEQUACY
SYNTHETIC METHIONINE FROM JAPAN, INV. NO. AA1921-115 (REVIEW)
NOVEMBER 5, 1998

Upon careful consideration of the various interested party responses to the Federal Register notice instituting this review investigation, I find that both domestic and foreign/importer interested parties have provided adequate responses. Accordingly, I determine that a full review investigation is warranted.

GENERAL VIEWS ON ADEQUACY

I note that there are no definitive quantitative or qualitative prerequisites for determining whether individual or group responses are adequate. Indeed, what is adequate in one review investigation may not be adequate in another. Similarly, one Commissioner's adequacy may be another's basis for determining that an expedited review investigation is appropriate. Individual Commissioners may find certain information more indicative of a party's or group's willingness to participate in a review investigation (see 19 U.S.C. § 1675(c)(2)(A)) than other information.

SPECIFIC ADEQUACY ISSUES IN THIS REVIEW INVESTIGATION

In this review investigation, one of the three domestic producers indicating a willingness to participate in the review investigation, NOVUS International, Inc., is jointly owned by Nippon Soda Company, Ltd., a non-responding subject foreign producer, and Mitsui & Co., a Japanese trading company engaged in the trading of, among other things, synthetic methionine.¹

NOVUS and the two other domestic producers accounted for 100% of domestic production in 1997. I find that three domestic producers provided adequate indications of their willingness to participate in this review investigation.

Neither of NOVUS's owners responded to the notice of institution² nor did they otherwise provide any data.³ The Commission did receive an adequate indication of willingness to participate in the

¹ At the time of the original investigation, Nippon was one of three subject foreign producers, and Mitsui one of three exporters. In their response to the notice of institution, the three domestic producers assert that Mitsui exports and sells synthetic methionine manufactured by Nippon Soda. See Response of Degussa et al. to the Notice of Institution at 31. The other two domestic producers, Degussa Corp. and Rhone-Poulenc Animal Nutrition, were non-subject foreign producers at the time of the original investigation.

² I note that both Nippon and Mitsui are on Commerce's "Interested Party" list for this review investigation. It is my understanding that Commerce prepares such lists for each sunset review investigation, and that the list is a compilation of all parties on record which participated in the particular matter. I am not aware of whether Commerce contacts such interested parties in connection with its notice of initiation.

³ In determining whether the foreign group response is adequate, the Commission indicated in the preamble to its final rules that it rejected some commenters' suggestion that the foreign

review investigation from Sumitomo Chemical Co., the only other Japanese producer. Accordingly, it could be argued that the group foreign producer response is not adequate based on Nippon's non-response.

While this could be argued, it is not -- at least not by the domestic producers.⁴ Instead, they argue that the group foreign producer response is inadequate based on the inadequate response of Sumitomo. Specifically, the domestic producers assert that Sumitomo's response is "incredulous and lacking in corroboration."

As noted above, the domestic producers assert that Sumitomo's response to the notice of institution is neither credible nor substantiated and, as such, the group response should be deemed inadequate.

In my view, Sumitomo's individual response adequately expresses its willingness to participate in the review investigation. Its response complied fully with the Commission's rules; it provided all requested data in the form required.

³ (...continued)

interested party group be subdivided into two groups: foreign producers; and U.S. importers of subject merchandise. See 63 Fed. Reg. 30599, 30603 (June 5, 1998).

In this instance, since Mitsui allegedly exports the synthetic methionine manufactured by Nippon Soda, I find that Mitsui's non-response is effectively subsumed by Nippon's non-response. In other words, if either or both had responded, their response(s) would have accounted for the same relative amount of total Japanese production. Accordingly, in my analytical framework, the two non-responses are of no greater significance than either individually.

For the remainder of these views, however, I will refer only to Nippon.

⁴ I think it may be worthwhile to the interested parties here, as well as those in future review investigations, if I briefly address the argument not made by the domestic producers.

Though the record is silent on the issue, it is logical to assume that at least NOVUS desired not to argue that the Commission should expedite based on its parents' failure to respond. It is equally logical that Nippon's determination not to participate is somehow a function of the fact that it owns NOVUS.

Although, as discussed more fully below, I find Sumitomo's response an adequate response on behalf of the entire foreign producer group, I would note that Nippon's failure to respond is contemplated by the Commission's rules, at least in theory. In the preamble to the final rules, the Commission acknowledged that there may be instances when it would be appropriate to disregard the non-responses of domestic producers who are "related parties." 63 Fed. Reg. 30599, 30604 (June 5, 1998); 19 U.S.C. § 1677(4)(B) ("related parties" defined). The theory underlying the disregarding of the non-response is that if a domestic related party's interest lies more in termination than in continuance of the order, its non-response could adversely effect those domestic producers whose interests lie in continuation.

By analogy, it may be that with regard to the adequacy of the foreign group response, Nippon's non-response should be disregarded, as it is related to NOVUS and its interests may be different than those of Sumitomo. I note, however, that this is only a theoretical observation.

I similarly find that Sumitomo's response adequately reflects the willingness of the foreign producers as a group to participate in this review investigation. Again, while there are no magical numerical standards for determining group adequacy, I am satisfied that both the domestic group and the foreign group adequately responded to the notice of institution, and that a full review investigation is therefore warranted.